

[Third Reprint]

ASSEMBLY, No. 1514

STATE OF NEW JERSEY

211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

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District 7 (Burlington and Camden)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

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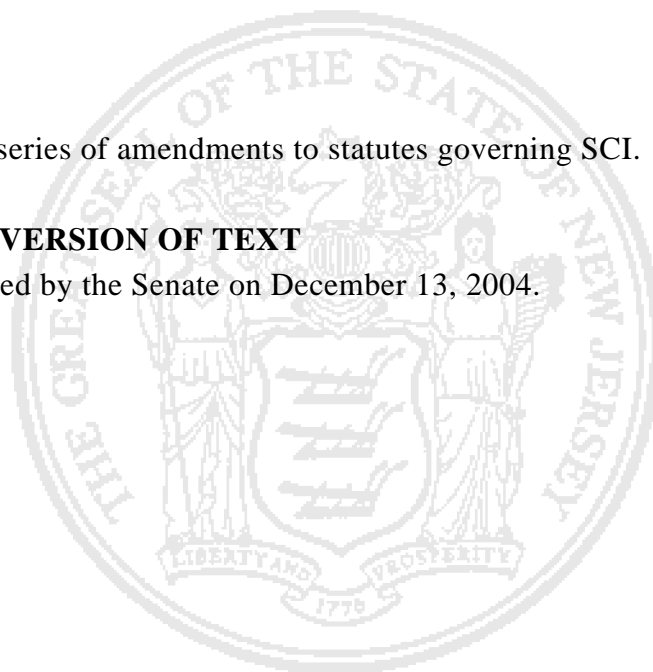
Assemblymen Connors, Wisniewski, Senators Vitale and Codey

SYNOPSIS

Proposes series of amendments to statutes governing SCI.

CURRENT VERSION OF TEXT

As amended by the Senate on December 13, 2004.



(Sponsorship Updated As Of: 2/15/2005)

1 AN ACT concerning the State Commission of Investigation and
 2 amending P.L.1968, c.266, P.L.1996, c.44, P.L.1979, c.254
 3 ¹[and],¹ P.L.1993, c.29 ¹and supplementing Title 52 of the Revised
 4 Statutes¹.

5
 6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 7 *of New Jersey:*

8
 9 1. Section 1 of P.L.1968, c.266 (C.52:9M-1) is amended to read
 10 as follows:

11 1. There is hereby created a permanent State Commission of
 12 Investigation. The commission shall consist of four members, to be
 13 known as commissioners.

14 Two members of the commission shall be appointed by the
 15 Governor. One each shall be appointed by the President of the Senate
 16 and by the Speaker of the General Assembly. Each member shall serve
 17 for a term of ~~[three]~~ four years and until the appointment and
 18 qualification of his successor ¹~~[provided, however, that in the event~~
 19 ~~that a successor is not duly appointed within 120 days after the~~
 20 ~~expiration of a member's term, a successor shall be appointed by the~~
 21 ~~Chief Justice of the Supreme Court within 60 days]~~¹. No person shall
 22 serve, in succession, more than two ~~[three-year]~~ four-year terms and
 23 any portion of an unexpired term as a member of the commission. The
 24 Governor shall designate one of the members to serve as chairman of
 25 the commission.

26 The members of the commission appointed by the President of the
 27 Senate and the Speaker of the General Assembly and at least one of
 28 the members appointed by the Governor shall be attorneys admitted to
 29 the bar of this State. No member or employee of the commission shall
 30 hold any other public office or public employment. ¹~~No member of the~~
 31 ~~commission shall have held any elective office or have been a~~
 32 ~~candidate for any elective office within the one year preceding his~~
 33 ~~appointment to the commission. No member of the commission shall~~
 34 ~~hold any elective office or be a candidate for any elective office within~~
 35 ~~the one year subsequent to his termination of service as a member of~~
 36 ~~the commission.~~¹ Not more than two of the members shall belong to
 37 the same political party.

38 Each member of the commission shall receive an annual salary of
 39 \$35,000. Each member shall also be entitled to reimbursement for his
 40 expenses actually and necessarily incurred in the performance of his

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted November 22, 2004.

² Assembly AJU committee amendments adopted December 9, 2004.

³ Senate floor amendments adopted December 13, 2004.

1 duties, including expenses of travel outside of the State.

2 Vacancies on the commission shall be filled for the unexpired terms
3 in the same manner as original appointments. Vacancies on the
4 commission shall be filled by the appropriate appointing authority
5 within ¹[90] 120¹ days. If the appropriate appointing authority does
6 not fill a vacancy within that time period, the vacancy shall be filled by
7 the Chief Justice of the Supreme Court within 60 days. A vacancy on
8 the commission shall not impair the right of the remaining members to
9 exercise all the powers of the commission.

10 Any determination made by the commission shall be by majority
11 vote. "Majority vote" means the affirmative vote of at least three
12 members of the commission if there are no vacancies on the
13 commission or the affirmative vote of at least two members of the
14 commission if there is a vacancy.
15 (cf: P.L.2001, c.369, s.1).

16

17 2. Section 8 of P.L.1996, c.44 (C.52:9M-12.2) is amended to read
18 as follows:

19 8. [a. Whenever a proposed State Commission of Investigation
20 report is critical of a person's conduct, a copy of the relevant portions
21 of the proposed report thereof shall be sent to that person prior to the
22 release of the report. Upon receipt, the person criticized shall have 15
23 days to submit a written response of a reasonable length which the
24 commission shall include in the report together with any relevant
25 evidence submitted by that person.

26 b. Any report issued by the commission shall include any relevant
27 evidence of a reasonable length concerning a person criticized in the
28 report which is of an exculpatory nature or which tends to exonerate
29 the criticized person.

30 c. A report issued by the commission shall include, upon request
31 of the Attorney General, a statement indicating the results of any
32 criminal prosecution or disciplinary action related to the report.]

33 a. The commission shall make a good faith effort to notify any
34 person whose conduct it intends to criticize in a proposed report.

35 b. The notice required under subsection a. of this section shall
36 describe the general nature and the context of the criticism, but need
37 not include any portion of the proposed report or any testimony or
38 evidence upon which the report is based.

39 c. A person receiving notice under subsection a. of this section
40 shall have 15 days to submit a response, signed by that person ¹[, any
41 part of which may be included in the report, as the commission in its
42 discretion may determine] under oath or affirmation. Thereafter the
43 commission shall consider the response ³[and at its discretion may
44 include all or any portion of the response in the report ¹] and shall
45 include the response in the report together with any relevant evidence
46 submitted by that person; except that the commission may redact from

1 the response any discussion or reference to a person who has not
2 received a notice under subsection a. of this section³.

3 d. Nothing in this section shall be construed to prevent the
4 commission from granting such further rights and privileges, as it may
5 determine, to any person whose conduct it intends to criticize in a
6 proposed report.

7 e. Notwithstanding the provisions of R.S.1:1-2, nothing in this
8 section shall be deemed to apply to any entity other than a natural
9 person.

10 ²[f. Any person receiving notice under subsection a. of this section
11 who shall ¹deliberately or intentionally¹ disclose, to any person other
12 than ¹[to an] a licensed¹ attorney retained ¹by that person¹ in
13 connection with the matter, the substance of ¹[that notice or any
14 other]¹ information received from the commission concerning that
15 notice, shall be guilty of a crime of the third degree.]²

16 (cf: P.L.1996, c.44, s.8).

17
18 3. Section 15 of P.L.1968, c.266 (C.52:9M-15) is amended to read
19 as follows:

20 15. a. Any person conducting or participating in any examination
21 or investigation who shall disclose or any person who, coming into
22 possession of or knowledge of the substance of any examination or
23 investigation, shall disclose, or any person who shall cause, encourage
24 or induce a person, including any witness or informant, to disclose,
25 other than as authorized or required by law, to any person other than
26 the commission or an officer having the power to appoint one or more
27 of the commissioners the name of any witness examined, or any
28 information obtained or given upon such examination or investigation,
29 except as directed by the Governor or commission, or any person
30 other than a member or employee of the commission or any person
31 entitled to assert a legal privilege who, coming into possession of or
32 knowledge of the substance of any pending examination or
33 investigation who fails to advise the Attorney General and the
34 commission of such possession or knowledge and to deliver to the
35 Attorney General and the commission any documents or materials
36 containing such information, shall be guilty of a misdemeanor until
37 September 1, 1979 when such person shall be guilty of a crime of the
38 third degree. Any member or employee of the commission who shall
39 violate this section shall be dismissed from his office or discharged
40 from his employment.

41 b. Any statement made by a member of the commission or an
42 employee thereof relevant to any proceedings before or investigative
43 activities of the commission shall be absolutely privileged and such
44 privilege shall be a complete defense to any action for libel or slander;
45 provided, however, that nothing in this subsection shall be deemed to
46 grant immunity for [any statement made with knowledge of its falsity

1 or with reckless disregard as to whether it was true or false] conduct
2 that was outside the scope of his employment or constituted a crime,
3 actual fraud, actual malice or willful misconduct.

4 c. Nothing contained in this section shall in any way prevent the
5 commission from furnishing information or making reports, as required
6 by this act, or from furnishing information to the Legislature, or to a
7 standing reference committee thereof, pursuant to a resolution duly
8 adopted by a standing reference committee or pursuant to a duly
9 authorized subpoena or subpoena duces tecum, provided, however, that
10 nothing herein shall be deemed to preclude the commission from
11 seeking from a court of competent jurisdiction a protective order to
12 avoid compliance with such subpoena or duces tecum.

13 d. Nothing in P.L.1963, c.73 (C.47:1A-1 et. seq.), as amended and
14 supplemented by P.L.2001, c.404, shall be construed to require the
15 commission to disclose any information acquired or any records
16 created, except as provided by this section.

17 (cf: P.L.1996, c.44, s.5)

18
19 4. Section 2 of P.L.1979, c.254 (C.52:9M-1.1) is amended to read
20 as follows:

21 2. Terms of members appointed after December 1, 1978.
22 Notwithstanding the provisions of section 1 of this act (C.52:9M-1)
23 and ¹[in order to effect the staggering of the terms of members of the
24 commission] in order to effect the staggering of the terms of members
25 of the commission¹ notwithstanding the term for which they were
26 originally appointed, the terms of the members [appointed after
27 December 1, 1978 shall be as follows: the first member appointed by
28 the Governor, 36 months; the second member appointed by the
29 Governor, 18 months; the member appointed by the President of the
30 Senate, 30 months; the member appointed by the Speaker of the
31 General Assembly, 24 months. Thereafter, the terms of the members
32 shall be as provided in P.L.1968, c.266, S.1 (C.52:9M-1)] ¹[in office
33 on the effective date of P.L. , c. (C.)(now pending before the
34 Legislature as this bill) shall end on the following dates: the term of
35 the member appointed by the Governor before January 1, 2001, on
36 December 31, 2002; the term of the member appointed by the
37 Governor after January 1, 2001, on December 31, 2003; the term of
38 the member appointed by the Speaker of the General Assembly on
39 December 31, 2004; and the term of the member appointed by the
40 President of the Senate, on December 31, 2005] appointed after
41 December 1, 1978 shall be as follows: the first member appointed by
42 the Governor, 36 months; the second member appointed by the
43 Governor, 18 months; the member appointed by the President of the
44 Senate, 30 months; the member appointed by the Speaker of the
45 General Assembly, 24 months. Thereafter, the terms of the members
46 shall be as provided in P.L.1968, c.266, s.1 (C.52:9M-1)¹.

47 (cf: P.L.1979, c.254, s.2)

¹5. (New section). Terms of members of State Commission of Investigation serving on or appointed after the effective date of P.L. , c. (C.)(now pending before the Legislature as this bill).

a. End of Terms. Notwithstanding the provisions of section 1 of P.L.1968, c.266 (C.52:9M-1) and the terms for which the members were originally appointed, the terms of the members in office on the effective date of P.L. , c. (C.)(now pending before the Legislature as this bill) shall end ²before 12 o'clock noon² on the following dates: the term of the member appointed by the Governor on or after November 5, 2004 would end on December 31, 2008; the term of the member appointed by the Governor after December 31, 2001 ²but before November 2004² would end on December 31, 2007; the term of the member appointed by the President of the Senate before December 31, 2002 would end on December 31, 2006; and the term of the member appointed by the Speaker of the General Assembly after December 31, 2001 would end on December 31, 2005.

b. Beginning of Terms. After terms end pursuant to subsection a. of this section, the four-year terms of the members appointed shall be as provided in section 1 of P.L.1968, c. 266 (C. 52:9M-1) in order to effect the staggering of terms, with each term of the members next appointed beginning ²at 12 o'clock noon² as follows: one appointment by the Governor for which the member's term shall begin on December 31, 2008; a second appointment by the Governor for which the member's term shall begin on December 31, 2007; an appointment by the Senate President for which the member's term shall begin on December 31, 2006; and an appointment by the Speaker of the General Assembly for which the member's term shall begin on December 31, 2005.¹

¹6. (New section) Any member of the State Commission of Investigation who is currently serving the member's first or second three-year term or portion of an unexpired term on the effective date of P.L. , c. (C.) (now pending before the Legislature as this bill) shall be subject to the provisions of subsection a. of section 5 of P.L. , c. (C.)(now pending before this Legislature) and shall be eligible to be reappointed to the commission for not more than one additional four-year term beginning as set forth in subsection b. of section 5 of P.L. , c. (C.)(now pending before this Legislature).¹

¹[5.] 7.¹ Section 23 of P.L 1993, c 29 (C.2A:156A-29) is amended to read as follows:

23. Requirements for access.

a. A law enforcement agency, but no other governmental entity, may require the disclosure by a provider of electronic communication service or remote computing service of the contents of an electronic communication without notice to the subscriber or the customer if the

1 law enforcement agency obtains a warrant.

2 b. Except as provided in subsection c. of this section, a provider of
3 electronic communication service or remote computing service may
4 disclose a record or other information pertaining to a subscriber or
5 customer of the service to any person other than a governmental
6 entity. This subsection shall not apply to the contents covered by
7 subsection a. of this section.

8 c. A provider of electronic communication service or remote
9 computing service shall disclose a record or other information
10 pertaining to a subscriber or customer of the service, other than
11 contents covered by subsections a. and f. of this section, to a law
12 enforcement agency under the following circumstances:

13 (1) the law enforcement agency has obtained a warrant;

14 (2) the law enforcement agency has obtained the consent of the
15 subscriber or customer to the disclosure; or

16 (3) the law enforcement agency has obtained a court order for such
17 disclosure under subsection e. of this section.

18 A law enforcement agency receiving records or information
19 pursuant to this subsection is not required to provide notice to the
20 customer or subscriber.

21 d. Notwithstanding any other provision of law to the contrary, no
22 service provider, its officers, employees, agents or other specified
23 persons shall be liable in any civil action for damages as a result of
24 providing information, facilities or assistance in accordance with the
25 terms of a court order or warrant under this section.

26 e. A court order for disclosure under subsection b. or c. may be
27 issued by a judge of competent jurisdiction and shall issue only if the
28 law enforcement agency offers specific and articulable facts showing
29 that there are reasonable grounds to believe that the record or other
30 information pertaining to a subscriber or customer of an electronic
31 communication service or remote computing service is relevant and
32 material to an ongoing criminal investigation. A judge who has issued
33 an order pursuant to this section, on a motion made promptly by the
34 service provider, may quash or modify such order, if the information
35 or records requested are unusually voluminous in nature or compliance
36 with such order otherwise would cause an undue burden on such
37 provider.

38 f. A provider of electronic communication service or remote
39 computing service shall disclose to a law enforcement agency or to
40 the State Commission of Investigation the name, address, telephone
41 number or other subscriber number or identity, and length of service
42 provided to a subscriber or customer of such service and the types of
43 services the subscriber or customer utilized, when the law enforcement
44 entity obtains a grand jury or trial subpoena or when the State
45 Commission of Investigation issues a subpoena.

46 g. Upon the request of a law enforcement agency, a provider of

1 wire or electronic communication service or a remote computing
2 service shall take all necessary steps to preserve, for a period of 90
3 days, records and other evidence in its possession pending the issuance
4 of a warrant. The preservation period shall be extended for an
5 additional 90 days upon the request of the law enforcement agency.
6 (cf: P.L.1999, c.151, s.6).

7

8 ¹[6.] 8.¹ This act shall take effect immediately.